

## Joint Standing Committee on Criminal Justice

**LD 659      An Act to Allow Charitable Solicitation by Law Enforcement Officers, Agencies and Associations      ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BAILEY	OTP-AM      MAJ	
	ONTP      MIN	

LD 659 was carried over from the First Regular Session of the 117th Legislature. LD 659 proposed to remove the existing ban prohibiting law enforcement officers, agencies or associations from soliciting property from the general public if that property in any way tangibly benefits or is intended to tangibly benefit any law enforcement officer, law enforcement agency or law enforcement association.

**Committee Amendment "A" (H/32)** was the Majority Report of the Joint Standing Committee on Criminal Justice. The amendment proposed to reenact the law regulating solicitation by law enforcement officers on March 1, 1998. The amendment also proposed to add a fiscal note to the bill.

(Not adopted)

**LD 1030      An Act to Provide Services to Adjudicated Young Women      ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
JOHNSON	ONTP	

LD 1030 was carried over from the First Regular Session of the 117th Legislature. LD 1030 proposed to appropriate General Fund dollars for the Gate House Program to provide transitional and diversion services for adjudicated young women involved with the Maine Youth Center.

**LD 1235      An Act to Transfer Juvenile Correctional Functions to the Department of Human Services      ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BRENNAN	ONTP	

LD 1235 was carried over from the First Regular Session of the 117th Legislature. Parts A, B and C of LD 1235 proposed to transfer all juvenile corrections functions from the Department of Corrections to the Department of Human Services.

Parts A, B and C of LD 1235 also proposed to:

1. Retain the Office of Advocacy in the Department of Corrections to investigate adult abuse or neglect in correctional facilities;
2. Establish a similar office for juvenile corrections in the Department of Human Services;

3. Limit provisions concerning juvenile delinquency prevention to youths who are not alleged to have committed crimes and are placed in the chapter dealing with child and family services in the Maine Revised Statutes, Title 22;
4. Place the remainder of the juvenile corrections functions in the Bureau of Juvenile Corrections, which would be moved from the Department of Corrections to the Department of Human Services;
5. Create divisions for planning, probation, aftercare and facilities;
6. Give the Juvenile Justice Advisory Group the total planning function for juvenile corrections and clarify that the group's implementation authority and the bureau's supervisory authority over planning would be limited to the 3-year comprehensive state plan required by federal law and that the bureau's expenditure authority relative to outside funds would be subject to the group's approval; and
7. Require funding to the Maine Youth Center from the Department of Human Services be reduced by 25% in the first fiscal year and 25% in the second fiscal year from the level of funding in fiscal year 1995/1996 and that the department expend the resulting funds on community services for youths to increase efforts in delinquency prevention, probation and aftercare.

Part D of LD 1235 proposed to:

1. Transfer from the Department of Corrections to the Department of Human Services all expenditures, assets, liabilities, appropriations and allocations, rules, contracts and agreements, records, property and employees to the extent attributable to functions transferred in the bill;
2. Direct the Department of Human Services to review juvenile corrections and report its findings to the Joint Standing Committee on Human Resources by December 1, 1995;
3. Direct transitional activities concerning the budget and the functions of the departments involved; and
4. Direct the Joint Standing Committee on Human Resources to submit legislation needed to correct errors and inconsistencies.

## **LD 1294      An Act to Prohibit Home Repair Fraud**

PUBLIC 681

Sponsor(s)  
GWADOSKY

Committee Report  
OTP-AM

Amendments Adopted  
H-731

LD 1294 was carried over from the First Regular Session of the 117th Legislature. LD 1294 proposed to define different practices that typically occur when home repair contractors defraud their customers. The bill proposed to create Maine Revised Statutes, Title 10, chapter ~~208a~~ violation of which is considered criminal conduct that may result in criminal penalties. The bill also proposed to increase the penalties if the victim of a home repair contractor is more than 60 years of age.

LD 1294 was originally titled "An Act to Prohibit Home Repair Fraud and Establish Aggravated Penalties When the Victim is an Older Person."

**Committee Amendment "A" (H/31)** proposed to replace the bill and to do the following:

1. Create in the Maine Criminal Code the Class D crime of home repair fraud, which is enhanced to a Class C crime if the actor has 2 or more prior convictions;
2. Make a violation of consumer sales solicitation laws a Class E crime, unless the State pleads and proves that the act or omission by the seller was intentional, in which case the violation is a Class D crime;
3. Make a violation of certain transient sales laws a Class E crime, unless the State pleads and proves that the act or omission by the seller was intentional, in which case the violation is a Class D crime; and
4. Add a fiscal note.

#### ***Enacted law summary***

Public Law 1995, chapter 681 creates in the Maine Criminal Code the Class D crime of home repair fraud, which may be enhanced to a Class C crime if the offender has 2 or more prior convictions for home repair fraud. It also provides enhanced civil penalties in the consumer solicitation laws, the transient sales laws and the door-to-door home repair transient seller laws. If the State pleads and proves that an act or omission by a seller operating under a provision of these consumer laws was intentional, a violation of the consumer sales law provision involved is enhanced from a Class E to a Class D crime.

### **LD 1457      An Act to Discourage the Spread of "Crack" Cocaine**

PUBLIC 635

Sponsor(s)  
BUNKER

Committee Report  
OTP-AM    MAJ  
OTP-AM    MIN

Amendments Adopted  
H-696

LD 1457 was carried over from the First Regular Session of the 117th Legislature. LD 1457 proposed to discourage the spread of cocaine base in the State.

Under existing law, possession of cocaine, whether it is cocaine hydrochloride (powder cocaine) or cocaine base (crack cocaine), is a Class D crime. LD 1457 proposed to increase that class of crime for possession of cocaine base by one level to a Class C crime. The disparity between the sentences proposed under this bill for cocaine base and for cocaine hydrochloride is supported by the addictive nature of cocaine base and the level of violence associated with its use and distribution.

**Committee Amendment "A" (H-696)** was the Majority Report of the Joint Standing Committee on Criminal Justice. The amendment proposed to strike sections 2 and 3 of the bill, but retain section 1, which defines and distinguishes cocaine in the form of cocaine base (crack cocaine) from cocaine hydrochloride (powder cocaine).

The amendment proposed to create presumptive quantities for furnishing and trafficking in cocaine base.

The amendment also proposed to provide that a person is guilty of aggravated trafficking or furnishing scheduled drugs if the person trafficks in or furnishes cocaine in the form of cocaine base in a quantity of 32 grams or more.

The amendment proposed to provide that possession of cocaine in the form of cocaine base constitutes a Class C crime when the State proves that the offender has a prior scheduled drug conviction.

The amendment proposed to provide that possession of 4 grams or more of cocaine in the form of cocaine base is a Class B crime.

The amendment also proposed to add a fiscal note to the bill.

**Committee Amendment "B" (H-697)** was the Minority Report of the Joint Standing Committee on Criminal Justice. The amendment proposed to retain provisions of the original bill that made possession of cocaine base a Class C crime and proposed to add provisions that define and distinguish cocaine in the form of cocaine base (crack cocaine) from cocaine hydrochloride (powder cocaine). The amendment also proposed to create presumptive quantities for furnishing and trafficking in cocaine base as in Committee Amendment "A" (H-696).

This amendment also proposed to add a fiscal note to the bill.

(Not adopted)

#### ***Enacted law summary***

Public Law 1995, chapter 635 makes possession of cocaine base a Class D crime and defines and distinguishes cocaine in the form of cocaine base (crack cocaine) from cocaine hydrochloride (powder cocaine).

Public Law 1995, chapter 635 creates presumptive quantities for furnishing and trafficking in cocaine base.

Public Law 1995, chapter 635 provides that a person is guilty of aggravated trafficking or furnishing scheduled drugs if the person trafficks in or furnishes cocaine in the form of cocaine base in a quantity of 32 grams or more.

Public Law 1995, chapter 635 provides that possession of cocaine in the form of cocaine base constitutes a Class C crime when the State proves that the offender has a prior scheduled drug conviction. Possession of cocaine in the form of cocaine base would continue to be a Class D crime when the State does not prove that the offender has a prior scheduled drug conviction.

Public Law 1995, chapter 635 also provides that possession of 4 grams or more of cocaine in the form of cocaine base is a Class B crime.

### **LD 1510      An Act to Make Comprehensive Changes to the Sex Offender Laws      PUBLIC 680**

Sponsor(s)  
PINGREE

Committee Report  
OTP-AM

Amendments Adopted  
S-516

LD 1510 was carried over from the First Regular Session of the 117th Legislature. LD 1510 proposed to make comprehensive changes to the laws involving sex offenders. The bill proposed to:

1. Require all judges and justices to attend a conference on sexual abuse;

2. Change the statute of limitations for civil actions involving sexual acts toward minors to allow actions to be brought up to 5 years after the victim reaches the age of majority;
3. Require all trials in which the defendant is accused of a sex offense against a minor be conducted in a speedy fashion;
4. Require the court to sentence a person convicted of a 2nd sex offense to the maximum ~~amount~~ allowed under the law. Prior to early release, the sex offender would be required to participate in and successfully complete a treatment program for sex offenders administered by the Department of Corrections. The court would also have authority to order the garnishment of up to 50% of an offender's wages to pay for the counseling of the victim;
5. Require the court, in an action involving sexual abuse by a person against a minor who is a resident of the same household, to order the defendant to vacate the household. The court would not be authorized to remove the child from the household unless it finds that the child is in danger;
6. Repeal the Sex Offender Registration Act and reenact it making the following changes:
  - A. Expand the application of the Act to apply to persons convicted of a broader range of sex offenses;
  - B. Require a sex offender to report any change of address and to register with the sheriff of the county in which the sex offender plans to reside;
  - C. Require the sheriff to report all information received from a sex offender to a central registry maintained by the Department of Public Safety;
  - D. Establish a schedule for duration of registration based upon the class of the crime; and
  - E. Establish penalties for failure to register;
7. Direct the Department of Education and the Department of Public Safety to develop and implement a program of education and prevention of sex abuse for use in elementary and middle schools; and
8. Require the Department of Corrections to develop and administer a program for the treatment and counseling of inmates convicted of sex offenses. The department would also have been directed to study alternative sentencing options for persons convicted of sex offenses and to report its findings and recommendations back to the Legislature.

**Committee Amendment "A" (§16)** proposed to replace the bill and to do the following:

1. Clarify the rights of victims to participate in the criminal justice process and create a victims' rights chapter in the Maine Criminal Code;
2. State that neither the failure of law enforcement to perform the requirements of the victims' rights chapter nor compliance with the victims' rights chapter gives rise to civil liability;
3. Specify that a law enforcement officer may arrest without a warrant a person who the officer has probable cause to believe has violated or is in violation of the sex offender registration requirements as established in the Maine Revised Statutes, Title ~~34~~ chapters 11 or 13;

4. Direct the court at sentencing to order every convicted sex offender, as defined under Title 34-A, section 11103, to satisfy all requirements set forth in the Sex Offender Registration and Notification Act;
5. Clarify that, upon request, the Department of Corrections shall notify victims of the conditional release or discharge of defendants convicted of murder or of a Class A, Class B or Class C crime who are committed to the department's custody. The amendment proposed to require county jails to give the same notice to victims when a defendant convicted of murder or a Class A, Class B or Class C crime who is committed to a county jail is conditionally released or discharged. The amendment also proposed to require state mental health institutes to give notice of a defendant's release to victims when a defendant, who is committed to an institute's custody, has been found not criminally responsible by reason of mental disease or defect for gross sexual assault and the victim had not in fact attained 16 years of age at the time of the crime;
6. Direct the court to attach as a condition of probation that a convicted sex offender, as defined under Title 34A, section 11103, satisfy all requirements set forth in the Sex Offender Registration and Notification Act;
7. Add an application section to the existing Sex Offender Registration Act, Title 34, chapter 11, that specifies that chapter 11 applies to sex offenders sentenced on or after June 30, 1992 and before September 1, 1996;
8. Enact Title 34A, chapter 13, the Sex Offender Registration and Notification Act to apply to sex offenders sentenced or placed in institutional confinement on or after September 1, 1996. The purpose of this Act is to protect the public safety by enhancing access to information concerning sex offenders by requiring registration by the offender and notification to victims and law enforcement agencies;
9. Allocate \$200,000 to the Department of Corrections from the Federal Expenditure Fund for the fiscal year ending June 30, 1997. The federal funds will be used to train probation officers and to otherwise carry out the purposes of this Act;
10. Direct the Department of Corrections to report back to the joint standing committee having jurisdiction over criminal justice matters regarding the implementation and application of the risk assessment and relapse prevention program for sex offenders, including the department's work assisting law enforcement agencies with risk assessment for the purpose of public notification, no later than January 1, 1998; and
11. Add a mandate preamble, 2 application sections, an allocation section, an effective date and a fiscal note.

#### ***Enacted law summary***

Public Law 1995, chapter 680 does the following:

1. Clarifies the rights of victims to participate in the criminal justice process and creates a victims' rights chapter in the Maine Criminal Code;
2. States that neither the failure of law enforcement to perform the requirements of the victims' rights chapter nor compliance with the victims' rights chapter gives rise to civil liability;
3. Specifies that a law enforcement officer may arrest without a warrant a person who the officer has probable cause to believe has violated or is in violation of the sex offender registration requirements in the Maine Revised Statutes, Title 34, chapters 11 or 13;

4. Directs the court at sentencing to order every convicted sex offender, as defined under Title 34-A, section 11103, to satisfy all requirements set forth in the Sex Offender Registration and Notification Act;
5. Clarifies that, upon request, the Department of Corrections shall notify victims of the conditional release or discharge of defendants convicted of murder or of a Class A, Class B or Class C crime who are committed to the department's custody. The amendment requires county jails to give the same notice to victims when a defendant convicted of murder or a Class A, Class B or Class C crime who is committed to a county jail is conditionally released or discharged. The amendment also requires state mental health institutes to give notice of a defendant's release to victims when a defendant, who is committed to an institute's custody, has been found not criminally responsible by reason of mental disease or defect for gross sexual assault and the victim had not in fact attained 16 years of age at the time of the crime;
6. Directs the court to attach as a condition of probation that a convicted sex offender, as defined under Title 34A, section 11103, satisfy all requirements set forth in the Sex Offender Registration and Notification Act;
7. Adds an application section to the existing Sex Offender Registration Act, Title 34 chapter 11 that specifies that chapter 11 applies to sex offenders sentenced on or after June 30, 1992 and before September 1, 1996;
8. Enacts Title 34A, chapter 13, the Sex Offender Registration and Notification Act. The Act applies to sex offenders sentenced or placed in institutional confinement under Title 15, section 103, on or after September 1, 1996. The purpose of this Act is to protect the public safety by enhancing access to information concerning sex offenders. The Act does the following:
  - A. Defines "risk assessment instrument," which the Department of Corrections shall use for the ongoing purpose of identifying risk factors predisposing a person to become a sex offender or a repeat sex offender. This information will be used to provide notification of a sex offender's conditional release or discharge from a state correctional facility to law enforcement agencies and to the public;
  - B. Defines "sex offender" as a person who is convicted of gross sexual assault if the victim had not in fact attained 16 years of age at the time of the crime or an individual found not criminally responsible for committing gross sexual assault by reason of mental disease or defect if the victim had not in fact attained 16 years of age at the time of the crime;
  - C. States that neither the failure of law enforcement to perform the requirements of this chapter nor compliance with this chapter gives rise to civil liability;
  - D. Explains the process for registering as a sex offender and increases the penalty for failure to register or update information as required; and
  - E. Explains the process for notification when a sex offender is conditionally released or discharged from institutional confinement as follows:
    - (1) The Department of Corrections shall give the Department of Public Safety, State Bureau of Identification notice of the address where the sex offender will reside; the address where the sex offender will work, if applicable; the geographic area to which a sex offender's conditional release is limited, if any; and the status of the sex offender when released as determined by the risk assessment instrument;

(2) The Department of Public Safety, State Bureau of Identification shall forward the information in subparagraph (1) to all law enforcement agencies that have jurisdiction in those areas where the sex offender may reside or work;

(3) The Department of Corrections shall notify members of the public who the department determines appropriate to ensure public safety; and

(4) The law enforcement agencies that receive information concerning the registration of a sex offender shall notify members of that municipality who the law enforcement agency determines appropriate to ensure public safety.

Upon request, the Department of Corrections shall provide to law enforcement agencies technical assistance concerning risk assessment for purposes of public notification of a sex offender's release.

This notification process is not intended to affect or limit the current ability of a member of the public to call the Department of Public Safety, State Bureau of Identification to inquire whether a person is a registered sex offender. The notification process is instead a method of enhancing public notification for the purpose of public safety;

9. Allocates \$200,000 to the Department of Corrections from the Federal Expenditure Fund for the fiscal year ending June 30, 1997. The federal funds will be used to train probation officers and to otherwise carry out the purposes of this Act; and

10. Directs the Department of Corrections to report back to the joint standing committee having jurisdiction over criminal justice matters regarding the implementation and application of the risk assessment and relapse prevention program for sex offenders, including the department's work assisting law enforcement agencies with risk assessment for the purpose of public notification, no later than January 1, 1998.

**LD 1661      An Act to Increase the Penalty for Criminal Restraint of a  
Young Child**

PUBLIC 689

Sponsor(s)  
PEAVEY  
SMALL

Committee Report  
OTP-AM

Amendments Adopted  
H-700

LD 1661 proposed to change the penalty for criminal restraint of a child under age 6 or a dependent person from a Class D crime to a Class C crime. The increase in penalty would allow law enforcement officers to arrest the offender rather than issue a summons.

LD 1661 was originally titled "An Act to Increase the Penalty for Criminal Restraint of a Young Child or a Dependent Person."

**Committee Amendment "A" (H700)** proposed to change from a Class D to a Class C crime criminal restraint of a child under 8 years of age. The amendment proposed to modify the title of the bill to reflect the intent of the amendment. The amendment also proposed to add a fiscal note.

***Enacted law summary***



Public Law 1995, chapter 689 changes from a Class D to a Class C crime criminal restraint of a child under 8 years of age.

**LD 1666      An Act to Include Sexual Contact in the Definition of Prostitution**

PUBLIC 638

Sponsor(s)  
POVICH  
FAIRCLOTH

Committee Report  
OTP-AM      MAJ  
ONTP          MIN

Amendments Adopted  
H-712

LD 1666 proposed to include sexual contact in the definition of prostitution to prohibit sexual contact for a pecuniary benefit. This bill also proposed to expand the crime of indecent conduct to prohibit sexual contact in a public place.

**Committee Amendment "A" (H/12)** proposed to strike from the bill the provision that expanded the crime of indecent conduct to prohibit sexual contact in a public place. The amendment also proposed to make a technical correction and add a fiscal note to the bill.

***Enacted law summary***

Public Law 1995, chapter 638 includes sexual contact in the definition of prostitution to prohibit sexual contact for pecuniary benefit.

**LD 1685      An Act to Provide Protection from Motor Vehicle Damage to Forest Lands**

PUBLIC 539

Sponsor(s)

Committee Report  
OTP-AM

Amendments Adopted  
H-701

LD 1685, a majority recommendation of the Commission to Study Trespass Laws, proposed to make it a Class E crime to damage forest products, personal property or roads as a result of operating a motor vehicle on forest land. The bill proposed to define forest products as any woody stemmed plant as well as any products that have been harvested but not yet transported from the harvesting site.

LD 1685 was originally titled “An Act to Provide Recovery for Motor Vehicle Damage to Forest Lands.”

**Committee Amendment "A" (H/01)** proposed to change the title of LD 1685 to represent the intent of the bill, which is to create a crime, not a process for civil recovery. The amendment also proposed to clarify that the crime is one of strict liability and to make a technical correction and add a fiscal note.

***Enacted law summary***

Public Law 1995, chapter 539 makes it a Class E strict liability crime to damage forest products, personal property or roads as a result of operating a motor vehicle on forest land.

**LD 1693      An Act to Enhance Fireworks Safety**

PUBLIC 528

Sponsor(s)  
CLUKEYCommittee Report  
OTP-AMAmendments Adopted  
H-702

LD 1693 proposed to clarify that only persons with proper permits issued by the Department of Public Safety may possess fireworks. The bill proposed to make possession without a proper permit of fireworks that exceed \$100 in value a Class D crime. The bill also proposed to make obtaining a permit but failing to display the fireworks according to the rules adopted by the Commissioner of Public Safety a Class E crime.

**Committee Amendment "A" (H702)** proposed to clarify that a violation of the conditions of a permit for display of fireworks is a Class E crime.

The amendment also proposed to make technical corrections and add a fiscal note to the bill.

***Enacted law summary***

Public Law 1995, chapter 528 allows only persons with proper permits issued by the Department of Public Safety to possess fireworks. A person without a permit who possesses fireworks that exceed more than \$100 in value is guilty of a Class D crime. A person with a permit who fails to follow the permit conditions for displaying fireworks is guilty of a Class E crime.

**LD 1694      An Act Concerning Juveniles Who Have Been Adjudicated to Have Committed the Juvenile Crime of Gross Sexual Assault**

PUBLIC 690

Sponsor(s)  
KERRCommittee Report  
OTP-AMAmendments Adopted  
H-752

LD 1694 proposed to require mandatory indeterminate institutional commitment and mandatory restitution to each victim of a juvenile adjudicated to have committed gross sexual assault on 2 or more victims under 14 years of age.

**Committee Amendment "A" (H752)** proposed to replace the bill and to do the following:

1. Require a juvenile adjudicated of an offense that if committed by an adult would be gross sexual assault under the Maine Revised Statutes, Title ~~17~~, section 253, subsection 1 to undergo a diagnostic evaluation at the Maine Youth Center before the court enters its disposition. This provision would be effective January 1, 1997;
2. Require a court in a disposition of a juvenile adjudicated of an offense that if committed by an adult would be murder or a Class A, Class B or Class C crime to state on the record and in the presence of the public, including victims and the family of victims who are present at the hearing, the court's reasons for ordering or not ordering the juvenile's commitment to a secure institution;
3. Clarify that the restitution that a court may order a juvenile offender to pay includes costs for counseling or rehabilitative care that victims must undergo as a result of the offense for which the juvenile is adjudicated;

4. Require the Department of Corrections to give notice of the commitment to its jurisdiction of a juvenile who is adjudicated of committing gross sexual assault to the Department of Human Services, to local law enforcement agencies and to the superintendent of the school system in which the juvenile attends school; and

5. Add an effective date and a fiscal note.

#### ***Enacted law summary***

Public Law 1995, chapter 690 does the following:

1. Requires a juvenile adjudicated of an offense that if committed by an adult would be gross sexual assault under the Maine Revised Statutes, Title ~~17~~, section 253, subsection 1 to undergo a diagnostic evaluation at the Maine Youth Center before the court enters its disposition. This provision takes effect January 1, 1997;
2. Requires a court in a disposition of a juvenile adjudicated of an offense that if committed by an adult would be murder or a Class A, Class B or Class C crime to state on the record and in the presence of the public, including victims and the family of victims who are present at the hearing, the court's reasons for ordering or not ordering the juvenile's commitment to a secure institution;
3. Clarifies that the restitution that a court may order a juvenile offender to pay includes costs for counseling or rehabilitative care that victims must undergo as a result of the offense for which the juvenile is adjudicated; and
4. Requires the Department of Corrections to give notice of the commitment to its jurisdiction of a juvenile who is adjudicated of committing gross sexual assault to the Department of Human Services, to local law enforcement agencies and to the superintendent of the school system in which the juvenile attends school.

### **LD 1709      An Act to Describe Property Posting under the Criminal Trespass and Trespass by Motor Vehicle Laws**

PUBLIC 529

Sponsor(s)

Committee Report  
OTP

Amendments Adopted

LD 1709, a majority recommendation of the Commission to Study Trespass Laws, proposed to add to the criminal trespass law one specific method of posting land for the purpose of criminal trespass, allowing the use of signs or paint markings to notify persons that entry upon the property constitutes criminal trespass.

The method of posting described in this bill is intended to give property owners and property users a clear method of posting, but it is not intended to be the only method of posting that would give rise to a criminal trespass violation. Any other posting that is made "in a manner reasonably likely to come to the attention of intruders" would also meet the terms of the statute.

The bill proposed to make clear that a landowner is only required to mark the portion of property where access is prohibited or limited. The bill also proposed to specify that destroying signs or markings on the property of another or posting land without the owner's permission is a criminal violation.

LD 1709 proposed to extend the crime of trespass by motor vehicle to include permitting a vehicle to enter or remain on the posted nonresidential property of another for any period of time.

***Enacted law summary***

Public Law 1995, chapter 529 adds to the criminal trespass law one specific method of posting, allowing the use of signs or paint markings to notify persons that entry upon the property constitutes criminal trespass.

The method of posting is intended to give property owners and property users a clear method of posting, but it is not intended to be the only method of posting that would give rise to a criminal trespass violation. Any other posting that is made "in a manner reasonably likely to come to the attention of intruders" would also meet the terms of the statute.

Public Law 1995, chapter 529 also clarifies that a landowner is only required to mark the portion of property where access is prohibited or limited. Chapter 529 specifies that destroying signs or markings on the property of another or posting land without the owner's permission is a criminal mischief.

Public Law 1995, chapter 529 further extends the crime of trespass by motor vehicle to include permitting a vehicle to enter or remain on the posted nonresidential property of another for any period of time.

**LD 1728      An Act to Enhance Amusement Ride Safety**

PUI

Sponsor(s)  
CLARK

Committee Report  
OTP-AM

Amendments Adopted  
H-713

LD 1728 proposed to increase the annual fee for safety inspections and licensing of certain amusements and motor vehicle raceways from \$250 to \$300 and to increase the amusement device license fee from \$37.50 to \$50. The bill proposed to dedicate the revenue to offset the cost of the licensing and inspections.

LD 1728 also proposed to amend the definition of "amusement device."

**Committee Amendment "A" (H/13)** proposed to add an allocation and a fiscal note to the bill.

***Enacted law summary***

Public Law 1995, chapter 533 increases the annual fee for safety inspections and licensing of certain amusements and motor vehicle raceways from \$250 to \$300 and increases the amusement device license fee from \$37.50 to \$50. The fees are dedicated to offset the costs of licensing and inspections. Public Law 1995, chapter 533 also amends the definition of "amusement device."

**LD 1738      An Act to Require Prisoners to Pay Their Fair Share of  
Victim Restitution**

PUBLIC 534

Sponsor(s)  
WHEELER

Committee Report  
OTP

Amendments Adopted

## BENOIT

LD 1738 proposed to change the language in the law that concerns the payment of restitution by a prisoner to a victim from 25% of all income of a prisoner to 25% of all money generated by the prisoner, which may include nonincome sources of money.

### *Enacted law summary*

Public Law 1995, chapter 534 requires a prisoner to pay to a victim 25% of all money the prisoner may generate from whatever source if the court has ordered that restitution be paid.

## **LD 1766      An Act to Prohibit Stalking**

PUBLIC 668

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SAXL M	OTP-AM      MAJ	H-829
KILKELLY	OTP-AM      MIN	

LD 1766 proposed to create the crime of stalking using the United States Department of Justice, National Institute of Justice's Model Anti-Stalking Code for States.

The crime consists of intentionally engaging in a course of conduct directed at a specific person that would cause a reasonable person to suffer emotional distress or to fear bodily injury or death to that person or to a member of that person's immediate family. The actor also must know or should know that the specific person will suffer emotional distress or will be placed in reasonable fear of bodily injury or death to that person or to a member of that person's immediate family, and the actor's acts must in fact induce substantial emotional distress or fear of bodily injury or death to the other person or to a member of that person's immediate family. "Course of conduct" includes a person's gaining unauthorized access to another person's personal, medical or financial information. Access to personal, medical or financial information includes access by computer network, mail, telephone or written communication. Constitutionally protected activity is not included within the meaning of "course of conduct." By including "emotional distress" in the provision, conduct prohibited by the bill would include such things as stalkers' ~~sexual~~ <sup>sexual</sup> harassment or numerous unwanted telephone calls made by a stalker.

LD 1766 proposed to make stalking a Class D crime with a minimum sentence of imprisonment of 60 days, of which 48 hours may not be suspended. The bill further proposed to make stalking a Class C crime if the actor has prior stalking violations or prior protective order violations. In these cases the court shall impose a minimum sentence of imprisonment of at least 6 months, of which 14 days may not be suspended.

LD 1766 also proposed to direct the Supreme Judicial Court, with the cooperation of the Maine Department of Public Safety, to establish a statewide computer criminal record system for use by law enforcement officers including prosecutors in their respective offices, to provide instant access to all available existing criminal records, including stalking or harassment convictions, and protection orders in the State. This system must be funded in part through an additional 2% surcharge on fines, forfeitures and penalties collected by the Government Operations Surcharge Fund pursuant to the Maine Revised Statutes, Title 4, section 1057. The 2% surcharge is repealed on January 1, 2001.

To assist in the enforcement of protective orders issued outside Maine, the bill proposed that the person who obtained the order may provide a copy to any Superior Court or District Court clerk

who, in cooperation with the Department of Public Safety, shall file the order in the statewide computer criminal record system.

**Committee Amendment "A" (HB28)** was the Majority Report of the Joint Standing Committee on Criminal Justice. This amendment proposed to replace the bill and to do the following:

1. Remove the additional 2% surcharge on all fines, forfeitures and penalties collected by the Government Operations Surcharge Fund;
2. Clarify the definition of the crime of stalking;
3. Specify that a law enforcement officer who has probable cause to believe a person has committed or is committing the crime of stalking may make a warrantless arrest of that person;
4. Specify that, for the purpose of stalking, the definition "course of conduct" does not include activity protected by the Constitution of Maine, the United States Constitution or any state or federal statute;
5. Make the enhanced penalty provision consistent with current law by classifying stalking a Class C crime after 2 or more prior convictions; and
6. Add a fiscal note.

(Not adopted)

**Committee Amendment "B" (HB29)** was the Minority Report of the Joint Standing Committee on Criminal Justice. This amendment proposed to replace the bill and to do the following:

1. Clarify the definition of the crime of stalking;
2. Specify that 1/2 of the additional 2% surcharge on fines, forfeitures and penalties must be paid to the Department of Public Safety to be distributed pursuant to the Maine Criminal Justice Information System;
3. Clarify that 1/2 of the additional 2% surcharge on fines, forfeitures and ~~fees~~ must be paid to the State Court Administrator for the purpose of funding the costs of operating the Judicial Department's computer system;
4. Specify that a law enforcement officer who has probable cause to believe a person has committed or is committing the crime of stalking may make a warrantless arrest of that person;
5. Specify that, for the purpose of stalking, the definition "course of conduct" does not include activity protected by the Constitution of Maine, the United States Constitution or by any state or federal statute;
6. Make the enhanced penalty provision consistent with current law by classifying stalking as a Class C crime after 2 or more prior convictions; and
7. Add an allocation section and a fiscal note.

#### ***Enacted law summary***

Public Law 1995, chapter 668 does the following:

1. Creates and defines the crime of stalking;
2. Directs that 1/2 of the additional 2% surcharge on fines, forfeitures and penalties be paid to the Department of Public Safety to be distributed pursuant to the Maine Criminal Justice Information System for the purpose of helping to fund a statewide computer criminal record system that will allow access to all available criminal records, including stalking or harassment convictions;
3. Clarifies that 1/2 of the additional 2% surcharge on fines, forfeitures and penalties be paid to the State Court Administrator for the purpose of funding the costs of operating the Judicial Department's computer system;
4. Specifies that a law enforcement officer who has probable cause to believe a person has committed or is committing the crime of stalking may make a warrantless arrest of that person;
5. Specifies that, for the purpose of stalking, the definition "course of conduct" does not include activity protected by the Constitution of Maine, the United States Constitution or by any state or federal statute. It is also the Legislature's intent that "course of conduct" does not include an otherwise lawful activity; and
6. Classifies stalking as a Class D crime with a minimum sentence of imprisonment of 60 days, of which 48 hours may not be suspended. Stalking is classified as a Class C crime if the actor has a prior stalking conviction or prior protective order violation, with a minimum sentence of imprisonment of at least 6 months, of which 14 days may not be suspended. The court may also order a stalker to attend an abuser education program approved by the court.

**LD 1796      An Act to Facilitate the Lawful Detention of Juveniles**

PUBLIC 647  
EMERGENCY

Sponsor(s)  
CLUKEY

Committee Report  
OTP-AM

Amendments Adopted  
H-776

LD 1796 proposed to eliminate the 72-hour limit on the use of a temporary holding resource, thus permitting this less restrictive form of detention to be used without a time limit. This increases the flexibility of the counties and is consistent with federal law. The bill also proposed to insert into the "rural exception" for detention in a county jail an inclement weather exception that currently exists in federal law.

LD 1796 also proposed to allow the Department of Corrections to provide temporary housing for a county that has no jail or that has a jail that is not fully certified.

**Committee Amendment "A" (H/776)** proposed to do the following:

1. Remove section 1 of the bill, which would have eliminated the 72-hour limit on the use of a temporary holding resource;
2. Direct the court to review the decision to detain a juvenile who is detained pending a hearing for revocation of probation within 5 days from the time the motion is filed;
3. Remove from law the requirement that the federal Office of Juvenile Justice and Delinquency Prevention approve a separate juvenile detention section in a county jail. The federal requirements continue to exist and apply to the State pursuant to federal regulation;

4. Correct an error that was created when Public Law 1995, chapter 368, Part R, section 6 repealed the Maine Revised Statutes, Title 30A, section 1557 and replaced the section with new language that did not fit substantively within the former structure. The correction is accomplished by repealing section 1557 and enacting a new section 1557,
5. Correct a crossreference to reflect the creation of Title 30A, section 1557A; and
6. Add a fiscal note to the bill.

**Senate Amendment "A" To Committee Amendment "A" (§501)** proposed to delete the provision in the committee amendment (H-776) that removed from law the requirement that the federal Office of Juvenile Justice and Delinquency Prevention approve a separate juvenile detention section in a county jail. The amendment also proposed to authorize the Department of Corrections to develop recommended standards to fulfill federal requirements governing the detention of juveniles in county jails.

(Not adopted)

**Senate Amendment "B" To Committee Amendment "A" (§39)** proposed that until the Northern Maine Regional Juvenile Detention Facility begins operating, a juvenile may be detained in a county jail, as long as the juvenile is detained in a separate juvenile section that meets federal standards for co-located facilities.

(Not adopted)

#### ***Enacted law summary***

Public Law 1995, chapter 647 does the following:

1. Inserts into the “rural exception” for juvenile detention in a county jail an inclement weather exception consistent with federal law;
2. Allows the Department of Corrections to provide temporary housing for a county that has no jail or that has a jail that is not fully certified;
3. Directs the court to review the decision to detain a juvenile who is detained pending a hearing for revocation of probation within 5 days from the time the motion is filed; and
4. Removes from law the requirement that the federal Office of Juvenile Justice and Delinquency Prevention approve a separate juvenile detention section in a county jail. This requirement continues to exist pursuant to federal regulation.

**LD 1861      An Act to Make All Cases of Vehicular Manslaughter  
Class A Crimes**

ONTP

Sponsor(s)  
POVICH

Committee Report  
ONTP      MAJ  
OTP-AM    MIN

Amendments Adopted



LD 1861 proposed to repeal language in the Maine Criminal Code that provides a defense to a prosecution of a manslaughter based upon the reckless or criminally negligent operation of a motor vehicle. This provision reduces manslaughter based upon the criminally negligent operation of a motor vehicle to a Class B crime. The defense is available under current law when the death of the victim resulted from conduct that would otherwise be defined as only a civil violation or civil infraction.

Because of the existence of Title 1-A, section 203, subsection 3, paragraph A, the court State v. Berube, 669 A.2d 170 (Me. 1995) vacated a Class A manslaughter conviction and they <sup>12</sup> sentence that had been imposed. LD 1861 proposed to overrule State v. Berube to make all vehicular homicides a Class A crime.

**Committee Amendment "A" (H30)** was the Minority Report of the Joint Standing Committee on Criminal Justice. The amendment proposed to add a fiscal note to the bill.

(Not adopted)